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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,011	04/14/2004	Orhan Soykan	P-7835.11 C3	5941
7590		04/07/2009	EXAMINER	
Kenneth J. Collier Medtronic, Inc. 710 Medtronic Parkway N.E. Minneapolis, MN 55432			PATEL, NATASHA	
			ART UNIT	PAPER NUMBER
			3766	
			MAIL DATE	DELIVERY MODE
			04/07/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/824,011	<b>Applicant(s)</b> SOYKAN ET AL.
	<b>Examiner</b> NATASHA N. PATEL	<b>Art Unit</b> 3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 1/15/09.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 20-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 20-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 April 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/0256/06)        | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The amendment filed on 1/15/09 has been received and considered. By this amendment, no Claims have been amended, cancelled, or added. Thus, Claims 20-25 remain pending in the application.

#### ***Response to Arguments***

1. Applicant's arguments with respect to claim 20 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20-22 and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by King (US Patent 5,103,821).

4. Regarding Claim 20, King discloses repair of the heart myocardium of a patient, the method comprising:

- (a) providing an implantable system (see col. 5, lines 56-61) comprising:
    - (i) a cell repopulation source comprising genetic material, stem cells, or a combination thereof (see S-A node cells; col. 5, lines 40-45), capable of forming new contractile tissue in and/or near an infarct zone of a patient's myocardium (see col. 1, lines 35-40); and
    - (ii) an electrical stimulation device for electrically stimulating the new contractile tissue in

Art Unit: 3766

and/or near the infarct zone of the patient's myocardium (see col. 6, lines 25-31);

(b) implanting the cell repopulation source into and/or near the infarct zone of the myocardium of a patient (see col. 5, lines 56-61);

(c) allowing sufficient time for new contractile tissue to form from the cell repopulation source (see col. 5, line 65- col. 6, line 2); and

(d) electrically stimulating the new contractile tissue (see col. 6, lines 25-31).

5. Regarding Claim 21, King discloses the electrical stimulation device comprises a muscle stimulator and electrodes (see col. 12, line 64- col. 13, line 4); wherein the electrodes are implanted into and/or near the infarct zone of the myocardium.

6. Regarding Claim 22, King discloses the muscle stimulator is implantable and is in the form of a capsule having electrodes incorporated therein. The examiner considers that a capsule is simply a small container and any pacemaker is essentially a small container of circuitry.

7. Regarding Claim 24, King discloses the muscle stimulator and cell repopulation source are delivered to the infarct zone through a catheter (see col. 9, lines 61-65).

8. Regarding Claim 25, King discloses the undifferentiated contractile cells comprise autologous cells (see col. 5, lines 37-46).

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over King (US Patent 5,103,821).

11. Regarding Claim 23, King does not explicitly disclose that the pacemaker also carries the cell repopulation source. However it would have been obvious to one of ordinary skill in the art at the time of the invention to place the delivery catheter with the pacemaker since the pacemaker is implanted at the same time as the harvested cells (see col. 12, lines 64-67). Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to place the carrier catheter on the pacemaker since it has been held that rearranging parts of an invention involves only routine skill in the art (*In re Japikse*, 86 USPQ 70).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATASHA N. PATEL whose telephone number is (571)272-5818. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Natasha N Patel/  
Examiner, Art Unit 3766

/Carl H. Layno/  
Supervisory Patent Examiner, Art  
Unit 3766